



## DISCUSSION

### A. Standard of Review

This court may entertain a petition for a writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 USC § 2254(a).

It shall "award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." Id § 2243.

### B. Legal Claims

Petitioner seeks federal habeas corpus relief from the BPH's October 25, 2006 decision finding him not suitable for parole, and denying him a subsequent hearing for four years, on the ground that the decision does not comport with due process. Among other things, petitioner contends that the decision is not supported by the evidence. Liberally construed, petitioner's claims appear colorable under § 2254 and merit an answer from respondent. See Sass v Cal Bd of Prison Terms, 461 F3d 1123, 1127-29 (9th Cir 2006) (refusal to set parole date for prisoner with 15-to-life sentence implicated prisoner's liberty interest in release on parole which cannot be denied without adequate procedural due process protections).

To the extent petitioner also seeks habeas relief in the form of a transfer to Turkey to serve the remainder of his state sentence pursuant to the US-Turkey Prisoner Transfer Treaty, the request is dismissed as a successive petition. His first petition was denied on the merits on the ground that California is not a party to the US-Turkey Treaty and therefore is not required to transfer him to Turkey. See Bayramoglu v Hamlet, No C 02-2553 VRW (PR) (ND Cal Feb 28, 2003).

1 A second or successive petition may not be filed in this court unless  
2 petitioner first obtains from the Ninth Circuit an order authorizing this court to  
3 consider the petition. See 28 USC § 2244(b)(3)(A). Petitioner has not obtained  
4 such an order from the Ninth Circuit. Petitioner's transfer request is DISMISSED  
5 without prejudice.

### 6 CONCLUSION

7 For the foregoing reasons and for good cause shown,

8 1. Petitioner's request to proceed in forma pauperis under 28 USC §  
9 1915 (docs # 3, 5 & 7) is GRANTED.

10 2. The clerk shall serve by certified mail a copy of this order and the  
11 petition and all attachments thereto on respondent and respondent's attorney, the  
12 Attorney General of the State of California. The clerk also shall serve a copy of  
13 this order on petitioner.

14 3. Respondent shall file with the court and serve on petitioner, within  
15 60 days of the issuance of this order, an answer conforming in all respects to Rule  
16 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of  
17 habeas corpus should not be issued. Respondent shall file with the answer and  
18 serve on petitioner a copy of all portions of the state trial record that have been  
19 transcribed previously and that are relevant to a determination of the issues  
20 presented by the petition.

21 4. If petitioner wishes to respond to the answer, he shall do so by  
22 filing a traverse with the court and serving it on respondent within 30 days of his  
23 receipt of the answer.

24 SO ORDERED.



25 VAUGHN R WALKER  
26 United States District Chief Judge